

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Scott Johnson**

Plaintiff,

v.

**Thrifty Oil Co.**, a California  
Corporation

Defendants.

**Case No. 5:20-cv-08781-BLF**

**First Amended Complaint For  
Damages And Injunctive Relief  
For Violations Of: Americans  
With Disabilities Act; Unruh Civil  
Rights Act**

Plaintiff Scott Johnson complains of Thrifty Oil Co., a California Corporation, and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Thrifty Oil Co. owned the real property located at or about 3501 Homestead Rd, Santa Clara, California, upon which the business "Texaco" operates, in September 2020.

1       3. Defendant Thrifty Oil Co. owns the real property located at or about  
2       3501 Homestead Rd, Santa Clara, California, upon which the business  
3       “Texaco” operates, currently.

4       4. Plaintiff does not know the true names of Defendants, their business  
5       capacities, their ownership connection to the property and business, or their  
6       relative responsibilities in causing the access violations herein complained of,  
7       and alleges a joint venture and common enterprise by all such Defendants.  
8       Plaintiff is informed and believes that each of the Defendants herein is  
9       responsible in some capacity for the events herein alleged, or is a necessary  
10      party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
11      the true names, capacities, connections, and responsibilities of the Defendants  
12      are ascertained.

13  
14      **JURISDICTION & VENUE:**

15      5. The Court has subject matter jurisdiction over the action pursuant to  
16      28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans  
17      with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18      6. Pursuant to supplemental jurisdiction, an attendant and related cause  
19      of action, arising from the same nucleus of operative facts and arising out of  
20      the same transactions, is also brought under California’s Unruh Civil Rights  
21      Act, which act expressly incorporates the Americans with Disabilities Act.

22      7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
23      founded on the fact that the real property which is the subject of this action is  
24      located in this district and that Plaintiff's cause of action arose in this district.

**FACTUAL ALLEGATIONS:**

8. Plaintiff went to Texaco (“Gas Station”) in September 2020 with the intention to avail himself of its goods or services motivated in part to determine if the defendants comply with the disability access laws.

9. The Gas Station is a facility open to the public, a place of public accommodation, and a business establishment.

10. Unfortunately, on the date of the plaintiff’s visit, the defendants failed to provide wheelchair accessible sales counters in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

11. The Gas Station provides sales counters to its customers but fails to provide wheelchair accessible sales counters.

12. A problem that plaintiff encountered was that the sales counter at the Gas Station store was too high and there was no lowered portion of the sales counter suitable for wheelchair users.

13. Plaintiff believes that there are other features of the sales counters that likely fail to comply with the ADA Standards and seeks to have fully compliant sales counters available for wheelchair users.

14. On information and belief the defendants currently fail to provide wheelchair accessible sales counters.

15. Additionally, on the date of the plaintiff’s visit, the defendants failed to provide wheelchair accessible door hardware in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

16. The Gas Station provides door hardware to its customers but fails to provide wheelchair accessible door hardware.

17. A problem that plaintiff encountered is that the entrance door hardware at the Gas Station store had a panel style handle that required tight grasping to operate.

18. Plaintiff believes that there are other features of the door hardware that

1 likely fail to comply with the ADA Standards and seeks to have fully compliant  
2 door hardware available for wheelchair users.

3 19. On information and belief the defendants currently fail to provide  
4 wheelchair accessible door hardware.

5 20. These barriers relate to and impact the plaintiff's disability. Plaintiff  
6 personally encountered these barriers.

7 21. As a wheelchair user, the plaintiff benefits from and is entitled to use  
8 wheelchair accessible facilities. By failing to provide accessible facilities, the  
9 defendants denied the plaintiff full and equal access.

10 22. The failure to provide accessible facilities created difficulty and  
11 discomfort for the Plaintiff.

12 23. The defendants have failed to maintain in working and useable  
13 conditions those features required to provide ready access to persons with  
14 disabilities.

15 24. The barriers identified above are easily removed without much  
16 difficulty or expense. They are the types of barriers identified by the  
17 Department of Justice as presumably readily achievable to remove and, in fact,  
18 these barriers are readily achievable to remove. Moreover, there are numerous  
19 alternative accommodations that could be made to provide a greater level of  
20 access if complete removal were not achievable.

21 25. Plaintiff will return to the Gas Station to avail himself of its goods or  
22 services and to determine compliance with the disability access laws once it is  
23 represented to him that the Gas Station and its facilities are accessible.  
24 Plaintiff is currently deterred from doing so because of his knowledge of the  
25 existing barriers and his uncertainty about the existence of yet other barriers  
26 on the site. If the barriers are not removed, the plaintiff will face unlawful and  
27 discriminatory barriers again.

28 26. Given the obvious and blatant nature of the barriers and violations

1 alleged herein, the plaintiff alleges, on information and belief, that there are  
 2 other violations and barriers on the site that relate to his disability. Plaintiff will  
 3 amend the complaint, to provide proper notice regarding the scope of this  
 4 lawsuit, once he conducts a site inspection. However, please be on notice that  
 5 the plaintiff seeks to have all barriers related to his disability remedied. See  
 6 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
 7 encounters one barrier at a site, he can sue to have all barriers that relate to his  
 8 disability removed regardless of whether he personally encountered them).

9  
 10 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
 11 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
 12 Defendants.) (42 U.S.C. section 12101, et seq.)

13 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 14 again herein, the allegations contained in all prior paragraphs of this  
 15 complaint.

16 28. Under the ADA, it is an act of discrimination to fail to ensure that the  
 17 privileges, advantages, accommodations, facilities, goods and services of any  
 18 place of public accommodation is offered on a full and equal basis by anyone  
 19 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 20 § 12182(a). Discrimination is defined, inter alia, as follows:

- 21 a. A failure to make reasonable modifications in policies, practices,  
 22 or procedures, when such modifications are necessary to afford  
 23 goods, services, facilities, privileges, advantages, or  
 24 accommodations to individuals with disabilities, unless the  
 25 accommodation would work a fundamental alteration of those  
 26 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 27 b. A failure to remove architectural barriers where such removal is  
 28 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are

1 defined by reference to the ADA Standards.

2 c. A failure to make alterations in such a manner that, to the  
3 maximum extent feasible, the altered portions of the facility are  
4 readily accessible to and usable by individuals with disabilities,  
5 including individuals who use wheelchairs or to ensure that, to the  
6 maximum extent feasible, the path of travel to the altered area and  
7 the bathrooms, telephones, and drinking fountains serving the  
8 altered area, are readily accessible to and usable by individuals  
9 with disabilities. 42 U.S.C. § 12183(a)(2).

10 29. When a business provides facilities such as sales or transaction counters,  
11 it must provide accessible sales or transaction counters.

12 30. Here, accessible sales or transaction counters have not been provided in  
13 conformance with the ADA Standards.

14 31. When a business provides facilities such as door hardware, it must  
15 provide accessible door hardware.

16 32. Here, accessible door hardware has not been provided in conformance  
17 with the ADA Standards.

18 33. The Safe Harbor provisions of the 2010 Standards are not applicable  
19 here because the conditions challenged in this lawsuit do not comply with the  
20 1991 Standards.

21 34. A public accommodation must maintain in operable working condition  
22 those features of its facilities and equipment that are required to be readily  
23 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

24 35. Here, the failure to ensure that the accessible facilities were available  
25 and ready to be used by the plaintiff is a violation of the law.  
26  
27  
28

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
2 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
3 Code §§ 51-53.)

4 36. Plaintiff repleads and incorporates by reference, as if fully set forth  
5 again herein, the allegations contained in all prior paragraphs of this  
6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
7 that persons with disabilities are entitled to full and equal accommodations,  
8 advantages, facilities, privileges, or services in all business establishment of  
9 every kind whatsoever within the jurisdiction of the State of California. Cal.  
10 Civ. Code §51(b).

11 37. The Unruh Act provides that a violation of the ADA is a violation of the  
12 Unruh Act. Cal. Civ. Code, § 51(f).

13 38. Defendants’ acts and omissions, as herein alleged, have violated the  
14 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
15 rights to full and equal use of the accommodations, advantages, facilities,  
16 privileges, or services offered.

17 39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
18 discomfort or embarrassment for the plaintiff, the defendants are also each  
19 responsible for statutory damages, i.e., a civil penalty. Civ. Code § 55.56(a)-  
20 (c).

21 40. Although the plaintiff encountered frustration and difficulty by facing  
22 discriminatory barriers, even manifesting itself with minor and fleeting  
23 physical symptoms, the plaintiff does not value this very modest physical  
24 personal injury greater than the amount of the statutory damages.

**PRAYER:**

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code § 52.

Dated: January 29, 2021

CENTER FOR DISABILITY ACCESS

By: /s/ Christopher A. Seabock

Christopher A. Seabock  
Attorney for Plaintiff